APPENDIX "A"

Opinions Below

Memorandum

(District Court)

This cause came on for hearing on plaintiff's complaint under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq. Plaintiff has moved for summary judgment, and the Government has moved for judgment on the pleadings.

It appears that the facts are as follows: Plaintiff, a native Okinawan, was married to a United States citizen and, thus, has become a citizen of this country. She is the proprietress of a business known as the Tea House August Moon on the island of Okinawa. The pleadings reflect that plaintiff was convicted of violating an organic tax law promulgated by the high Commissioner of the Ryukyu Islands. After plaintiff's indictment by a grand jury, she was tried and convicted by a petit jury and the court sentenced her to pay a fine of $8,000. Her appeal was duly taken to and denied by the United States Civil Administration Appellate Court for the Ryukyu Islands. No provision is made for further appellate action by her. There is no dispute as to these material facts.

Plaintiff's counsel seeks a declaration that the above-described proceedings are invalid on the ground that the courts of the Ryukyu Islands, as presently constituted under an executive order of the President,[1] have no criminal jurisdiction over a United States citizen. The specific relief sought by the complaint is a declaration that the conviction is null and void.

Following the Treaty of Peace between the United States and Japan, jurisdiction over the Ryukyu Islands was estab-

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[1] 22 Federal Register 4007 et seq.

lished under the interim control of the United States pending ultimate transfer to a trusteeship as provided by the United Nations Charter. By the executive order heretofore mentioned, courts essentially comparable to those established under the jurisdiction of the United States in its states and territories have been established in the Ryukyu Islands. The current criminal practice of these courts includes grand juries and petit juries.[2] The judges of these courts are appointed pursuant to power delegated by the President.

Plaintiff takes the position that the failure of Congress to legislate in this area invalidates this system of jurisprudence established by the executive order as it applies to a United States citizen. Concomitant with this assertion is a denial of Presidential authority to submit a United States citizen to criminal jurisdiction in a court established by executive order.

At the outset, the Court recognizes that the absence of congressional legislation is not in and of itself controlling, for the exigencies of the international situation may be such that it would be inappropriate for Congress to pass legislation concerning the Ryukyu Islands as if they were territorially a part of the United States. It has long been recognized that in the field of foreign relations that the important, complicated, delicate and manifold problems incident thereto are confided solely to the judgment and discretion of the President.[3] During the temporary occupation of these Islands, it would be singularly inappropriate to expect Congress to establish a permanent judicial setup comparable to that which exists in islands under the perma-

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[2] See discussion of *In re Nicholson*, H.C. 141-61, *infra*.

[3] *United States* v. *Curtiss-Wright Export Co.*, 299 U.S. 304, 319.

nent control of the United States.[4] This situation is not novel. In *Madsen* v. *Kinsella,* 343 U.S. 341, the Supreme Court upheld the jurisdiction and authority of similar courts which were established by an executive order in the United States occupied zone of Germany. In Madsen, the petitioner was convicted of murder in violation of the German Criminal Code in a court known as the United States Court of the Allied High Commission for Germany. As in the instant case, the offense and trial took place after the cessation of hostilities and during a period of military occupation. Plaintiff's counsel contends that the jurisdiction of such a court expires upon the cessation of hostilities. It is clear that in *Madsen* the Supreme Court specifically repudiated this argument.

> "In the absence of attempts by Congress to limit the President's power, it appears that, as Commander-in-Chief of the Army and Navy of the United States, he may, in time of war, establish and prescribe the jurisdiction and procedure of military commissions, and of tribunals in the nature of such commissions, in territory occupied by Armed Forces of the United States. *His authority to do this sometimes survives cessation of hostilities.*"[5]

The jurisdiction of such courts has been repeatedly upheld by the Supreme Court.[6]

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[4] Chief Justice Marshall, describing the power and origin of legislative courts of the United States as distinguished from Article III courts, in *American Insurance Co.* v. *Canter,* 26 U.S. (1 Pet.) 685, clearly stated that the power to establish legislative courts relates only to territory belonging to the United States. *Id.* at 690-91.

[5] 343 U.S. at 348 (emphasis supplied).

[6] *Duncan* v. *Kahanamoku,* 327 U.S. 304; *Santiago* v. *Nogueras,* 214 U.S. 260; *Neely* v. *Henkel,* 180 U.S. 109; *Mechanics & Traders Bank* v. *Union Bank,* 22 Wall. 276; *The Grapeshot,* 9 Wall. 129; *Cross* v. *Harrison,* 16 How. 164.

Plaintiff's counsel relies upon *Reid* v. *Covert*, 354 U.S. 1, wherein the Supreme Court held that trial of a United States citizen by a military court which did not provide certain constitutional safeguards was unconstitutional. Mr. Justice Black repudiated reliance on the "Insular Cases" which arose at the turn of the century.[7] Similarly, this Court has previously had occasion to examine the court system of the Ryukyu Islands. In the case of *In re Nicholson*, H.C. 141-61, Judge McGarraghy found that the denial of a jury trial to a United States citizen, tried before the courts of the Ryukyu Islands, violated the petitioner's constitutional rights. It is apparent that the court procedures which resulted in Judge McGarraghy's decision have since been changed. In the instant case, plaintiff was accorded a grand jury and a petit jury; she had the benefit of counsel throughout the proceedings; and the record in no way reflects a denial of constitutional rights resulting from the operation of the courts of the Ryukyu Islands.[8]

Although plaintiff did not rely on it, *Bowman* v. *United States*, 260 U.S. 94, raises a related issue. In *Bowman*, petitioner and others were convicted in the United States District Court for the Southern District of New York for the violation of a penal provision of the United States Code. Plaintiff might have argued that she was entitled to a trial in a Federal court similar to the trial accorded Bowman.[9] However, in *Bowman*, the Supreme Court recognized that other forums would have jurisdiction over Bowman.

> "Clearly the *locus* of this crime as intended by Congress is in a foreign country and certainly the foreign country in which he discharges his official duty could

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[7] The leading case was *In re Ross*, 140 U.S. 453.

[8] Cf. *Wilson* v. *Girard*, 354 U.S. 524.

[9] The District Court for the Southern District of New York was the first port of entry.

not object to the trial in a United States court of a United States consul for crime of this sort committed within its borders." [10]

It is noteworthy that, whereas Bowman was found guilty of violating a provision of the United States Code, plaintiff herein was found guilty of violating an organic law intended for the use and benefit of the government established pursuant to the Treaty with Japan.

The Court finds that the system of courts of the Ryukyu Islands, as they currently operate, do not possess unconstitutional features.[11] The Court further finds that these courts were validly constituted by executive order of the President and have jurisdiction over a United States citizen as to crimes occurring within the Ryukyu Islands.[12] Accordingly, plaintiff's motion for summary judgment is denied and defendant's motion for judgment on the pleadings is granted.

Counsel will prepare an appropriate order.

/s/ OLIVER GASCH
Judge

March 18, 1966.

Order

This cause having come on for hearing on motion of the plaintiff for summary judgment and on motion of the defendant for judgment on the pleadings, and counsel having been heard and the Court being fully advised in the premises and being of the opinion that plaintiff's motion

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[10] 260 U.S. at 99; Madsen v. Kinsella, supra.

[11] Cf. *Reid* v. *Covert, supra.*

[12] *Madsen* v. *Kinsella, supra.*

for summary judgment should be denied and defendant's motion for judgment on the pleadings should be granted.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

(1) That the motion of plaintiff for summary judgment be and the same is hereby denied;

(2) That defendant's motion for judgment on the pleadings be and the same is hereby granted;

(3) That the complaint be and the same is hereby dismissed.

/s/ OLIVER GASCH
Judge

March 28, 1966.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appeal from the United States District Court
for the District of Columbia

Decided March 23, 1967

Mr. Stuart H. Robeson, with whom *Mr. Roger E. Brooks* was on the brief, for appellant. *Mr. Warren E. Magee* also argued for appellant. *Mr. Hans A. Nathan* also entered an appearance for appellant.

Mr. Walter H. Fleischer, Attorney, Department of Justice, with whom *Acting Assistant Attorney General Doolittle, Messrs. David G. Bress,* United States Attorney, and *Morton Hollander,* Attorney, Department of Justice, were on the brief, for appellee. *Mr. John C. Eldridge,* Attorney, Department of Justice, also entered an appearance for appellee.

Before BAZELON, *Chief Judge*, WILBUR K. MILLER, *Senior Circuit Judge*, and MCGOWAN, *Circuit Judge*.

MCGOWAN, *Circuit Judge:* Appellant, a naturalized American citizen residing on the island of Okinawa in the Ryukyu Islands, was convicted of evading income taxes imposed by a local taxing statute. Her trial was had before a jury in a local court created as part of the machinery for the government of Okinawa after its capture by the United States in World War II. An appellate court in the same judicial system having denied her appeal, she brought suit against the Secretary of Defense in the United States District Court of the District of Columbia, seeking a declaratory judgment that her conviction was a nullity. The case was heard on appellant's motion for summary judgment and appellee's motion for judgment on the pleadings. The court denied the former and granted the latter, dismissing the complaint. This appeal is from that judgment. We affirm.

I

A variety of arguments have been pressed upon us as to why appellant's conviction in the Okinawan court should be nullified. In their profusion they present a somewhat duplicative aspect[1] which makes it unnecessary to comment upon each one, although we have considered them

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[1] New and additional counsel came into this appeal at the time of the filing of appellant's reply brief shortly before oral argument. This brief contained new points and a restatement of old ones, and was obviously regarded by counsel as the primary vehicle for the presentation of appellant's case. This was as irregular as it was confusing, and the Government's motion to strike was well taken. We have concluded to deny that motion in the interest of advancing this litigation towards a state of repose.

all.[2] The central thrust of appellant's position is directed against the power of the President, as distinct from the Congress, to provide for the governance of Okinawa during the period when the responsibility for doing so resides only in the United States. In order to appraise the claims advanced by appellant, it is necessary to examine how that responsibility came into being and how it has been met.

Okinawa, the largest and most important island in the Ryukyus, was taken from Japan and occupied by the United States during the last battle of World War II. American military government was instituted and continued beyond the cessation of actual hostilities. On April 28, 1952, Japan entered into a Treaty of Peace with the Allied Powers, including the United States. Article 3 of the Treaty dealt with the Ryukyus and provided:

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole

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[2] Subsequent to the entry of judgment against her by the district court, the appellant filed a motion to amend the jurisdictional allegations in her complaint and a separate motion to perpetuate testimony. She complains that the district court erred in denying her motions. Each is properly addressed to the discretion of the district court; and, in the circumstances of this case, we see no reason for interfering with its exercise of that discretion. See FED. R. CIV. P. 15(a); 27(b). Appellant also urges that, conceding for the sake of argument that the President had authority to provide as he did for the Ryukyuan Islands, he unlawfully delegated this authority both to the Secretaries of State and Defense and to the High Commissioner of the Islands. Her position manifests a misunderstanding of the nature of the President's office. The President is not required to exereise his authority over the Islands in person, any more than he is required personally to carry out his other responsibilities. Sardino v. Federal Reserve Bank of New York, 361 F.2d 106, 110 (2d Cir.), *cert. denied*, 385 U.S. 898 (1966). See also Russell Motor Car Co. v. United States, 261 U.S. 514, 523 (1923).

> administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands). . . . Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

[1952] 3 U.S.T. & O.I.A. 3169, 3172-73, T.I.A.S. No. 2490.

Acting pursuant to this treaty, President Eisenhower, on June 5, 1957, issued Executive Order No. 10713, 22 Fed. Reg. 4007. This Order made provision for the continuance of the existing central Government of the Ryukyus, with a legislature directly elected by the people of the Islands. It also provided for a civil administration under the Department of Defense. The head of the civil administration was a High Commissioner designated by the Secretary of Defense. The executive power of the Government was described, however, as vested in a Chief Executive who must be a Ryukyuan and who was to be appointed by the High Commissioner after consultation with the legislature. The Chief Executive and the High Commissioner had, in turn, veto power over the legislature, but, in the case of the High Commissioner, this was severely limited by a 1962 amendment of the 1957 Executive Order. Exec. Order No. 11010, 27 Fed. Reg. 2621.

The legislature was empowered to act with reference to "all subjects of legislation of domestic application." Provision was expressly made for the reporting to the Congress of the United States of all laws enacted by the Ryukyuan legislature.[3] In its treatment of judicial power, the Order differentiated between the Government of the

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[3] "The High Commissioner shall report to the Secretary of Defense all laws enacted by the legislative body of the Government of the Ryukyu Islands and the said Secretary shall report the same to the Congress of the United States." Exec. Order No. 10713, section 7, *supra*.

Ryukyuan Islands, on the one hand, and the civil administration, on the other. Each was to have a system of trial and appellate courts, with both civil and criminal jurisdiction. Criminal jurisdiction over American military personnel and other Americans on the Islands as employees of the United States Government, including their dependents, was generally reserved to the courts of the civil administration; and that reserved jurisdiction expressly extended to penal laws enacted by the Ryukyuan legislature. Judges of the civil administration courts are American citizens in the employ of the United States Government; and they are appointed by the High Commissioner. By an ordinance of the civil administration promulgated in 1963, grand jury indictment and petit jury trial were assured for criminal defendants in the civil administration courts.[4]

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[4] This ordinance reflects the concern of the Supreme Court in Reid v. Covert, 354 U.S. 1 (1957), that American civilians tried for crimes abroad under tribunals of United States provenance shall not be shorn of the protections of the Bill of Rights. Our own District Court on two earlier occasions has held that the absence of the jury system in the civil administration courts in Okinawa invalidated criminal convictions. In re Nicholson, H.C. 141-61, D.D.C., Nov. 19, 1963, and Ikeda v. McNamara, H.C. 416-62, D.D.C., Oct. 19, 1962. Appellant argues in her reply brief that her conviction was invalid because the petit jury that convicted her was not made up exclusively of American citizens. She points in this regard to 28 U.S.C. § 1861 (1964), which requires that federal jurors be citizens. But this statute relates to the United States District Courts, and we are admittedly not dealing here with a court of that kind trying a U.S. Code offense. 18 U.S.C. § 3231 (1964) gives those courts original jurisdiction of "all offenses against the laws of the United States." The law which appellant was found to have violated clearly seems to us not to have been such a law. In addition to this specific allegation, appellant argues generally that she has been deprived of numerous constitutional rights by virtue of her trial in the civil administration courts. Our reading of the record comports, in every respect, with that of the district court judge who found that "the record in no way reflects a denial of constitutional rights resulting from the operation of the courts of the Ryukyu Islands." 252 F. Supp. 111, 113 (D.D.C. 1966).

Appellant operated an Okinawan business known as the Tea House August Moon. She was charged in a grand jury indictment with evading payment of income taxes to the Government of the Ryukyus in the total amount of about $70,000 relating to the period from 1957 to 1962. The tax liability arose under an income tax law passed by the Islands legislature in 1952. Represented by counsel, she was tried by a jury, convicted on one count and acquitted on other counts, and fined $8,000. Again represented by counsel, she appealed to the civil administration appellate court which, with opinion, affirmed the conviction.

II

Amid the welter of contentions pressed upon us by appellant through her two-platoon system of counsel, we are not able to discover any claim that the income tax law itself could not validly be applied to appellant, as distinct from her claim that the tribunal in which she was tried could not validly punish her for its violation. This law, we remind, was not a part of the Internal Revenue Code applicable to American citizens generally. It was a purely local income tax passed by the Ryukyuan legislature and applicable only within the territory subject to its legislative jurisdiction. Thus, without intending any inference as to the precise significance of the difference, we remark that we are not dealing here with an American citizen charged with a U.S. Code crime created by Congress.

What is insisted upon by appellant is that a United States citizen cannot be convicted of crime except in an Article III court set up by Congress.[5] She asserts that

[5] The appellant's argument on this level reduces to the proposition that Reid v. Covert, 354 U.S. 1, 7 (1957), requires that she be tried in an Article III court, presided over by an Article III judge. In so maintaining, she misinterprets the *Reid* decision. While Mr. Justice Black held in *Reid* that Article III, *Section Two,* providing for a jury trial at the location of a crime, is a

the civil administration courts have no such derivation, but are, rather, an arm of the Executive. This characterization seems to us quite accurate, but it does not compel the result appellant seeks.

This issue was dealt with at some length in the opinion of the distinguished District Judge, 252 F. Supp. 111 (D.D.C. 1966); and we need not retrace his steps.[6] He has discussed the very special nature of our relationship with Okinawa, and has appropriately measured Presidential power by reference to it. Okinawa fell into our charge as an incident of our military operations against Japan in the Pacific. Unlike the course we followed after the Spanish-American War in respect of Puerto Rico and the Philippines, we have, vis-a-vis Okinawa, been a most reluctant conqueror indeed. In the Treaty of Peace with Japan we signified our purpose not to hold Okinawa as a United States possession but to put it in due course under the United Nations trusteeship system. More latterly it

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vital constitutional protection which the United States cannot ignore when acting against its citizens abroad, nowhere did he accord the same status to Article III, *Section One*, which gives to Congress the power to establish courts and judicial positions. It is Article III, Section One, upon which appellant laces great reliance in urging that her constitutional rights have been violated, for the record is clear that there have been no violations of her Article III, Section Two rights. We note only that American citizens are tried every day in the District of Columbia for criminal offenses in courts and by judges not deriving from Article III, Section One, although they are accorded Article III, Section Two rights.

[6] The United States Court of Military Appeals has also had occasion to consider the constitutionality of the civil administration courts of the Ryukyus; and this tribunal has approved the use of presidential power to establish these courts because, "in the absence of . . . action by Congress, or previous statute, the responsibility for administering the civilian government of the area remained with the President." United States v. Vierra, 14 U.S.C.M.A. 48, 50 (1963).

has become a stated objective of our international policy to restore Okinawa to Japan.[7]

In the Executive Order issued in implementation of the Peace Treaty, President Eisenhower declared at the outset the amenability of its provisions to action by Congress.[8] Congress has, however, remained content for a decade to allow Okinawa to be governed under the terms of the Order. The reasons for this inaction are not hard to divine. They reflect what appears to be a national consensus that our possession of Okinawa is, by our own design, temporary; and that a wise concept of our foreign relations points in the direction of its being returned, sooner rather than later, to a Japan which has, in no small part because of a host of similar forebearances on our part, become a strong bulwark of the free world in the Far East. In this posture, when our friends in Japan look expectantly to an early restoration of these islands, the assertion by Congress of its authority to create permanent and detailed laws for the government of the Ryukyus would be as impolitic as it would, hopefully,

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[7] President Kennedy, in a statement to accompany Exec. Order No. 11010, March 16, 1962, which amended President Eisenhower's original order setting up the Government of the Ryukyus, declared it to be the public policy of the United States that we recognize the Ryukyus as "a part of the Japanese homeland and look forward to the day when the security of the Free World will permit their restoration to full Japanese sovereignty." 1962 PUBLIC PAPERS OF THE PRESIDENTS 247-48. For similar statements, see 48 DEP'T STATE BULL. 770 (1962) (referring to "the anticipated eventual restoration of these islands to Japanese administration"); 45 DEP'T STATE BULL. 57-58 (1961); 37 DEP'T STATE BULL. 52 (1957).

[8] "*Except as the Congress may otherwise provide by law with respect to the Government of the Ryukyu Islands,* all administrative, legislative and jurisdictional powers reposed in the United States by Article III of the Treaty of Peace with Japan shall be exercised in accordance with this Order." Exec. Order No. 10713, section 1, *supra.* [Emphasis added.]

be short-lived and thereby wasteful of Congressional energies.

The power of the President in the conduct of governmental business of international consequence has traditionally been viewed by the courts as broad. See *United States* v. *Curtiss-Wright Export Co.*, 299 U.S. 304, 319 (1936). In any event, the problem here is not a clash between the respective authorities of President and Congress. As noted above, the Executive Order defers in terms to the contingency of Congressional action to provide for the government of the islands. The inaction of Congress thus far has certainly not been due to its lack of awareness of the arrangements which the President has made. The Executive Order, as we have seen, requires that Congress be kept informed of all laws passed by the Islands legislature. Moreover, Congress is regularly called upon to appropriate funds for, and to make disposition of certain revenues accruing to the United States from, the operation of the governmental arrangements provided by the Executive Order.[9] We are not, under these circumstances, inclined to view the mere absence of Con-

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[9] Congress has appropriated funds to build the civil administration courthouse, see *Hearings Before the Subcommittee of the House Committee on Appropriations*, 89th Cong., 1st Sess. 169 (1959), and continuously has appropriated funds to assist the civil administration of the Ryukyus, *e.g.*, H.R. Doc. 15 (Part I), 89th Cong., 1st Sess. 228 (1965). In Section 3 of the Act of July 12, 1960, 74 Stat. 461, Congress expressly provided for the disposition of "fines, fees, and forfeitures received by the civil administration of the Ryukyu Islands," and, in Section 6 of the same Act, it provided that "nothing in this Act shall be construed to extend the application of any law of the United States to the Ryukyu Islands which would not otherwise be applicable there." For other examples of Congressional awareness of the exercise of Executive power in the Ryukyus, see *Hearings before the House Committee on Armed Services on Sundry Legislation Affecting the Naval and Military Establishments*, 84th Cong., 2d Sess. (1955). See also 75 Stat. 463 (1961), 22 U.S.C. § 1945 (1964).

gressional action as implying either Congressional ignorance of, or dissatisfaction with, the Presidential course.[10]

Appellant insists, however, that her constitutional rights are violated unless she is tried in an Article III court, which only Congress can provide. The Supreme Court has, however, recognized an extensive power in the President, absent Congressional provision, to set up special tribunals in occupied foreign lands to try American citizens for crime. This is *Madsen* v. *Kinsella*, 343 U.S. 341 (1952), where the Court expressly noted that this power on occasion survives the cessation of hostilities.[11] We think that, under the special circumstances of our relationship to Okinawa, it can survive the Treaty of Peace.

Affirmed.

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[10] As noted above, appellant does not press upon us a claim that the President could not exercise authority over the Ryukyus if he had been delegated such power by Congress. That he could so act has long been settled law. American Ins. Co. v. Cantor, 26 U.S. (1 Pet.) 685 (1828). See generally 1 MOORE, FEDERAL PRACTICE 22-26 (2d ed. 1964).

[11] "It is suggested that, because the occupation statute took effect September 21, 1949, whereas the crime charged occurred October 20, 1949, the constitutional authority for petitioner's trial by military commission expired before the crime took place. Such is not the case. The authority for such commissions does not necessarily expire upon cessation of hostilities or even, for all purposes, with a treaty of peace. It may continue long enough to permit the occupying power to discharge its responsibilities fully. *Santiagos* v. *Nogueras*, 214 U.S. 260; *Neely* v. *Henkel*, 180 U.S. 109, 124; *Burke* v. *Miltenberger*, 19 Wall. 519; *Leitensdorfer* v. *Webb*, 20 How. 176; *Cross* v. *Harrison*, 16 How. 164."
Madsen v. Kinsella, 343 U.S. at 360.

APPENDIX "B"

Decision of Judge Joseph C. McGarraghy of the U.S. District Court for the District of Columbia, in *Donna A. Nicholson, Petitioner* v. *Robert S. McNamara, Respondent,* Habeas Corpus No. 141-61, dated November 19, 1963:

The petitioner, Donna A. Nicholson, the wife of a member of the Armed Forces, brings this action against the Secretary of Defense, Robert S. McNamara, seeking relief under the Declaratory Judgment Act, 28 U.S.C. Sec. 2201. The parties have filed cross-motions for summary judgment.

On June 16, 1961, Mrs. Nicholson filed a petition in this Court for a writ of habeas corpus, alleging detention without indictment by a Grand Jury in violation of her constitutional rights, by the United States Civil Administration Court of the Ryukyu Islands. On the same day, the Secretary of Defense was ordered by the Court to show cause why a writ of habeas corpus could not issue, and the Court further ordered that Petitioner be retained in the custody of the United States Army Hospital at Camp Kue, Okinawa, until further order of the Court.

However, on June 26, 1961, petitioner was tried by the Civil Administration Court without a jury, and found guilty on a charge of murder. On the same day she was sentenced to five years at hard labor, but the execution of the sentence was suspended, and she was placed on probation for five years. A petition to appeal the conviction was filed, but petitioner evidently instructed her attorney to dismiss the appeal, as she was leaving the Islands and returning to the United States.

The Secretary of Defense then moved to dismiss the petition for a writ of habeas corpus on the ground that Mrs. Nicholson was no longer in custody as re-

quired by the Habeas Corpus Statute, 28 U.S.C., Sec. 2241. The Court granted respondent McNamara's motion to dismiss on July 24, 1961, but granted petitioner leave to amend her complaint by filing this action for declaratory judgment.

That relief by habeas corpus was available to petitioner is indicated by the later decision of the Supreme Court on January 14, 1963, in *Jones* v. *Cunningham*, 371 U.S. 236 (1962) in which the Court held:

> "While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of the members of the Virginia Parole Board within the meaning of the habeas corpus statute . . ."

Thus it appears that habeas corpus was a proper remedy to challenge the action of the Civil Administration Court although petitioner is on probation. However, Mrs. Nicholson is now before the Court seeking a declaratory judgment.

Having succeeded in obtaining dismissal of the habeas corpus petition on asserted jurisdictional grounds (a point of doubtful validity in view of the later ruling of the Supreme Court in *Jones* v. *Cunningham*, supra) the respondent now opposes the suit for declaratory judgment on jurisdictional grounds, contending that petitioner did not exhaust available appellate review.

In support of this argument respondent cites *Clark* v. *Memolo*, 174 F. 2d 978 (C.A.D.C. 1949) in which the Court of Appeals for this circuit said that "the action for declaratory judgment is not suitable and does not lie in the District of Columbia in such cases as a substitute for . . . a new trial or appeal."

This same principle has been applied in habeas corpus cases also. As the Supreme Court said in *Sunal* v. *Large,* 332 U.S. 174 (1947), "the general rule is that the writ of habeas corpus will not be allowed to do service for an appeal." However, the Court specifically recognized that where the writ is sought to attack the jurisdiction of the court based on violation of specific constitutional guarantees, it has been sustained, regardless of the lack of appeal. (see pp. 178-179).

The Court is of the opinion that the rights of the petitioner should be decided on their merits and in this proceeding rather than requiring the petitioner to resort to another petition for writ of habeas corpus which presumably would be resisted with the same defenses raised here.

The exception to the general rule which was recognized in *Sunal* v. *Large,* supra, also is applicable to actions for declaratory judgment as that action may be an alternative to habeas corpus under certain circumstances. Thus in *Hurley* v. *Reed,* 110 U.S. App. D.C. 32 (1961) the Court allowed a federal prisoner whose parole was revoked by the Parole Board, without representation of counsel, to proceed by declaratory judgment although habeas corpus would possibly have been available in Pennsylvania, the place of his confinement. And in *Voss* v. *State of Illinois,* 204 F. Supp. 268 (1962) the District Court did not require petitioner Goss, who had been convicted and had appealed in the state courts, to submit to confinement by the sheriff and bring habeas corpus, but allowed him to sue immediately for a declaratory judgment in the Federal Court.

The Supreme Court has sustained the writ of habeas corpus while there has been no appeal, but the petitioner's constitutional rights were violated, or where

exceptional circumstances were present. See *Ex parte Wilson,* 114 U.S. 417 (1884); *Ex parte Bain,* 121 U.S. 1 (1886); and *Callan* v. *Wilson,* 127 U.S. 540 (1887).

In *Bowen* v. *Johnston,* 306 U.S. 19 (1938), the Supreme Court stated that the rule which requires resort to appellate procedure for the correction of errors is "not so inflexible that it may not yield to *exceptional circumstances* where the need for the remedy afforded by the writ of habeas corpus is apparent." (Emphasis supplied).

While the above cases deal with the writ of habeas corpus, the common thread running through all but *Bowen* and *Hudgings* is the concern with the constitutional right to indictment by grand jury, and trial by jury. A declaratory judgment, just as habeas corpus, may well be invoked to protect against a violation of those constitutional rights. Thus, there does not appear to be any reason why the failure of Mrs. Nicholson to appeal should preclude this action, when her rights have been placed in jeopardy, and habeas corpus is not readily available.

This Court is of the opinion that the confinement of Mrs. Nicholson pursuant to an information charging her with a capital offense, and her subsequent trial and conviction by a court without a jury, was in violation of her rights under Article III, Section 2, Clause 3, and the Fifth and Sixth Amendments to the Constitution. (See *Ikeda* v. *McNamara,* Habeas Corpus 416-62).

Accordingly, petitioner's motion for summary judgment will be granted and respondent's motion will be denied.

Counsel for petitioner will submit an appropriate order.

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Findings of Fact and Conclusions of Law entered October 19, 1962 by Judge Charles F. McLaughlin of the U.S. District Court for the District of Columbia, in Ikeda v. McNamara, Habeas Corpus No. 416-62:

FINDINGS OF FACT

1. The Court has jurisdiction of the parties and the subject matter of this cause.

2. Petitioner, Bennett Ken Ikeda, is a citizen of the United States of America in civilian status in the Ryukyuan Islands (Okinawa).

3. By a complaint dated September 11, 1962 issued by a Judge of the United States Civil Administration Court, Ryukyuan Islands, the petitioner was charged with the following criminal violations:

(a) Under Article 2.3.4.1 of the United States Civil Administration Ryukyuan Penal Code, Civil Administration Ordinance No. 144, with having operated without a foreign investment license from the Chief Executive, Government of the Ryukyuan Islands.

(b) Under Article 246 of the Penal Code of Japan, with fraud punishable by imprisonment at forced labor for not more than ten years.

4. On the basis of said complaint a warrant of arrest thereafter was issued against the petitioner by a Judge of the United States Civil Administration Court, Ryukyuan Islands.

5. On September 13 and 14, 1962, a preliminary hearing on the said complaint was held before a Judge of the United States Civil Administration Court, Ryukyuan Islands as a result of which the petitioner was bound over for trial before said Courts to be held on October 15, 1962 with bond being established in the amount of $5000.00.

6. In default of bond, petitioner is now and ever since the said preliminary hearing, has been detained in a prison

in the Ryukyuan Islands at the instance and in the custody of the respondent ROBERT S. MCNAMARA.

7. All of the proceedings aforementioned, giving rise to petitioner's detention were instituted and advanced by respondent under Executive Order 10713 promulgated by the President of the United States on June 5, 1957, as amended on March 19, 1962, by Executive Order 11010.

8. That neither by the terms of the said Executive Order as amended nor by the terms of any rules and regulations issued thereto, is any provision made for trial before a Court, or for indictment of a grand jury as required by the Fifth Amendment to the Constitution, or for a trial by jury as required by Article III, Sec. 2, Clause 3 of the Constitution, and by the Sixth Amendment to the Constitution.

9. That petitioner has and will be denied the right of trial before a Court, indictment of a grand jury and a trial by jury.

10. That the detention of the petitioner by the respondent contravenes Article III, Sec. 2, Clause 3 of the Constitution and the Fifth and Sixth Amendments thereto.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the subject matter of this cause.

2. The denial to the petitioner of trial before Court, of indictment by a grand jury as required by the Fifth Amendment to the Constitution and of a trial by jury as required by Article III, Section 2, Clause 3 of the Constitution and the Sixth Amendment thereto, is in violation of the petitioner's Constitutional rights.

3. The detention of the petitioner by the respondent is therefore contrary to law and an Order should be entered discharging the petitioner from the custody of the respondent.

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United States Constitution

Article II — The President

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

* * * * *

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

* * * * *

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to

the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

* * * * *

ARTICLE III—THE JUDICIARY

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * * * *

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

* * * * *

APPENDIX "C"

Treaty of Peace with Japan, Executive Order, Military Civil Administration Ordinance and "Bill" Involved.

Treaty of Peace with Japan, Article 3

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

Title 18, United States Code, Section 3231, provides in pertinent part:

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Executive Order 10713

June 5, 1957

As amended by Executive Order 11010, March 19,1966

PROVIDING FOR ADMINISTRATION OF THE RYUKYU ISLANDS

WHEREAS under Article III of the Treaty of Peace with Japan the United States is exercising all and any powers of administration, legislation and jurisdiction over the territory, including territorial waters, and inhabitants of the Ryukyu Islands (the term "Ryukyu Islands," as used in this Order, meaning Nahsei Shoto south of 29 degrees

North Latitude, excluding the islands in the Amami Oshima Group with respect to which all rights and interests of the United States under the said article of the treaty have been relinquished to Japan;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution, and as President of the United States and Commander-in-Chief of the Armed Forces of the United States, it is ordered as follows:

Section 1. Except as the Congress may otherwise provide by law with respect to the Government of the Ryukyu Islands, all administrative, legislative, and jurisdictional powers reposed in the United States by Article III of the Treaty of Peace with Japan shall be exercised in accordance with this Order.

Section 2. The said powers shall be exercised by the Secretary of Defense, subject to the direction and control of the President of the United States. In the exercise of this authority the Secretary of Defense shall encourage the development of an effective and responsible Ryukyuan Government, based on democratic principles and supported by a sound financial structure, shall make every effort to improve the welfare and well-being of the inhabitants of the Ryukyu Islands, and shall continue to promote the economic and cultural advancement of the inhabitants. The Secretary of Defense may delegate any function vested in him by this Order to such officials or organizational entities of the Department of Defense as he may designate.

Section 3. The Secretary of State shall be responsible for the conduct of relations with foreign countries and international organizations with respect to the Ryukyu Islands.

Section 4. (a) There is established, under the jurisdiction of the Secretary of Defense, a civil administration of the Ryukyu Islands, the head of which shall be known as the High Commissioner of the Ryukyu Islands (hereinafter referred to as the "High Commissioner"). The High

Commissioner (1) shall be designated by the Secretary of Defense, after consultation with the Secretary of State and with the approval of the President, from among the active duty members of the armed forces of the United States, (2) shall have the powers and perform the duties assigned to him by the terms of this order, (3) may delegate any function vested in him to such officials of the civil administration as he may designate, and (4) shall carry out any powers or duties delegated or assigned to him by the Secretary of Defense pursuant to this order.

(b) There shall be under the High Commissioner a civilian official who shall have the title of Civil Administrator. The Civil Administrator shall be designated by the Secretary of Defense, after consultation with the Secretary of State and with the approval of the President, and shall have such powers and perform such duties as may be assigned to him by the High Commissioner. (As amended by EO 11010)

Section 5. There is hereby continued, subject to the provisions of this order, the now existing Ryukyuan central government (hereinafter referred to as the Government of the Ryukyu Islands).

Section 6. (a) The legislative power of the Government of the Ryukyu Islands, except as otherwise provided in this order, shall be vested in a legislative body consisting of a single house. Members of the legislative body shall be directly elected by the people of the islands in 1962, and triennially thereafter, for terms of three years.

(b) The territory of the Ryukyu Islands shall continue to be divided into districts, each of which shall elect one member of the legislative body. The present 29 districts are continued, but the number or boundaries of districts may be altered by law enacted by the Government of the Ryukyu Islands with the approval of the High Commissioner. Any redistricting shall be done with due regard to obtaining districts which are relatively compact and

contiguous and which have reasonably equal populations. (As amended by EO 11010)

Section 7. The legislative body shall exercise legislative powers which extend only to all subjects of legislation of domestic application. The legislative body shall determine the procedures for judging the selection and qualification of its own members and shall choose therefrom its officers and determine its rules and procedures. Local legislative bodies, the members of which shall be elected by the inhabitants of the respective municipalities in accordance with procedures established by the legislative body of the Government of the Ryukyu Islands, shall be given and shall exercise appropriate municipal legislative powers. The High Commissioner shall report to the Secretary of Defense all laws enacted by the legislative body of the Government of the Ryukyu Islands and the said Secretary shall report the same to the Congress of the United States.

Section 8. (a) The executive power of the Government of the Ryukyu Islands shall be vested in a Chief Executive, who shall be a Ryukyuan. The Chief Executive shall have general supervision and control of all executive agencies and instrumentalities of the Government of the Ryukyu Islands and shall faithfully execute the laws and ordinances applicable to the Ryukyu Islands.

(b)(1) The Chief Executive shall be appointed by the High Commissioner on the basis of a nomination which is made by the legislative body herein provided for and is acceptable to the High Commissioner. A Chief Executive so appointed shall serve for the remainder of the term of the legislative body which nominated him and for such reasonable period thereafter as may be necessary for the appointment of a successor pursuant to this paragraph, or, failing such an appointment, pursuant to paragraph (2) of this subsection.

(2) In the event the legislative body does not make an acceptable nomination within a reasonable time as deter-

mined by the High Commissioner, or if by reason of other unusual circumstances it is deemed by the High Commissioner to be necessary, he may appoint a Chief Executive without a nomination. The tenure of any Chief Executive appointed pursuant to this paragraph (2) shall be as determined by the High Commissioner.

(c) The head of each municipal government shall be elected by the people of the respective municipality in accordance with procedures established by the legislative body of the Government of the Ryukyu Islands. (As amended by EO 11010).

Section 9. (a) Every bill passed by the legislative body shall, before it becomes law, be presented to the Chief Executive. If the Chief Executive approves a bill he shall sign it, but if not he shall return it, with his objections, to the legislative body within fifteen days after it shall have been presented to him. If a bill is not returned within the specified fifteen day period, it shall become law in like manner as if it had been approved by the Chief Executive, unless the legislative body by adjournment prevents its return, in which case it shall be law if approved by the Chief Executive within forty-five days after it shall have been presented to him; otherwise it shall not be law. When a bill is returned to the legislative body with objections by the Chief Executive, the legislative body may proceed to reconsider it. If, after such reconsideration two thirds of the legislative body pass it, it shall become law in like manner as if it had been approved by the Chief Executive.

(b) If any bill approved by the legislative body contains several items of appropriation of money, the Chief Executive may object to one or more of such items or any part or parts, portion or portions thereof, while approving the other items, or parts or portions of the bill. In such case, the Chief Executive shall append to the bill, at the time of signing it, a statement of the items, or parts or

portions thereof, objected to, and the items, or parts or portions thereof, so objected to shall not take effect. Should the legislative body seek to over-ride such objections of the Chief Executive, the procedures set forth above will apply. In computing any period of days for the foregoing purposes, Sundays and legal holidays shall be excluded. (As amended by EO 11010)

Section 10. Judicial powers in the Ryukyu Islands shall be exercised as follows:

(a) A system of courts, including the civil and criminal courts of original jurisdiction and appellate tribunals, shall be maintained by the Government of the Ryukyu Islands. These courts shall exercise jurisdiction as follows:

(1) Civil jurisdiction in all civil cases, subject to the provisions of paragraphs b(1) and (2), below.

(2) Criminal jurisdiction over all persons except (a) members of the United States Forces or the civilian component, (b) employees of the United States Government who are United States nationals, and (c) dependents of the foregoing, provided, nevertheless, that subject to paragraph c, below, criminal jurisdiction may be exercised by courts of the Government of the Ryukyu Islands over dependents who are Ryukyuans. Criminal jurisdiction may be withdrawn from the courts of the Government of the Ryukyu Islands by the High Commissioner in any case which affects the security, property, or interests of the United States and which is so designated by him. (As amended by EO 11010)

(b) A system of courts, including civil and criminal courts of original jurisdiction and appellate tribunals, shall be maintained by the Civil Administration. These courts shall exercise jurisdiction as follows:

(1) Civil jurisdiction over any case or controversy of particular importance affecting the security, property, or interests of the United States, as determined by the High

Commissioner. Such cases instituted in a court of the Government of the Ryukyu Islands shall be transferred to the appropriate Civil Administration court upon order of the High Commissioner at any time in the proceedings, including final appellate process, prior to the entering of final decree, order or judgment. Cases so transferred may be subject to trial de novo in the discretion of the court of the Civil Administration.

(2) Civil jurisdiction in cases and controversies in which a member of the United States forces or the civilian component thereof, an employee of the United States Government who is a United States national, or a dependent of one of the foregoing, unless such dependent is a Ryukyuan, is a party if upon petition of one of the parties to the suit the High Commissioner deems the case to be important in its effect, direct or indirect, on the security of the Islands, on foreign relations or on the security, property or interests of the United States or nationals thereof and determines that the Civil Administration should assume jurisdiction over the case. In this event, such cases instituted in a court of the Government of the Ryukyu Islands shall be transferred to the appropriate Civil Administration court by order of the High Commissioner at any time in the proceedings, including final appellate process, prior to the entering of final decree, order or judgment. Cases so transferred may be subject to trial de novo in the discretion of the court of the Civil Administration.

(3) Criminal jurisdiction over (a) the civilian component, (b) employees of the United States Government who are United States nationals, and (c) dependents, excluding Ryukyuans, (i) of the foregoing and (ii) of members of the United States forces. (As amended by EO 11010)

(4) Criminal jurisdiction in specific cases of particular importance affecting the security, property, or interests of the United States, as determined by the High Commissioner. Such cases instituted in a court of the Government

of the Ryukyu Islands may be transferred to the appropriate Civil Administration court upon order of the High Commissioner at any time in the proceedings, including the final appellate process, prior to the entering of final decree, order or judgment. Cases so transferred may be subject to trial de novo in the discretion of the court of the Civil Administration.

(c) Criminal jurisdiction over persons subject to trial by courts-martial under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.) will be exercised by courts other than courts-martial only when the military commander concerned determines not to exercise military jurisdiction under the Uniform Code of Military Justice and specifically indicates to the High Commissioner his approval of referring the case to another court.

(d) The highest appellate court of the Civil Administration shall have jurisdiction to review:

(1) Any case, civil or criminal, tried in the inferior courts of the Civil Administration, whether initiated therein or removed thereto, upon appeal by any party.

(2) Any case, civil or criminal, decided by the highest court of the Government of the Ryukyu Islands having jurisdiction thereof in which is involved

(i) a conflict of decision between the highest court of the Government of the Ryukyu Islands and the highest appellate court of the Civil Administration or

(ii) a question of United States, foreign or international law, including the interpretation of any treaty, act of Congress of the United States, Executive Order of the President of the United States, or of a proclamation, ordinance or order of the High Commissioner upon appeal by any party or, if no such appeal be taken, upon petition, setting forth the special grounds therefor, presented to the court by the chief legal officer of the Civil Administration. The highest appellate court of the Civil Administra-

tion shall have power to affirm, modify, set aside or reverse the judgment, order or decree reviewed or to remand the case with such directions for a new trial or for entry of judgment as may be just. In a criminal case, the appellate court may set aside the judgment of conviction, or may commute, reduce (but not increase) or suspend the execution of sentence.

(e) Nothing in this section shall be construed as extending to any court of the Government of the Ryukyu Islands or of the Civil Administration, jurisdiction over the United States Government or any agency thereof unless specific authority has been conferred in the premises by the Congress of the United States.

(f) For the purpose of these provisions the expression

(1) "Members of the United States Forces" shall mean the personnel on active duty belonging to the land, sea or air armed forces of the United States of America whenever in the Ryukyu Islands.

(2) "Civilian component" shall mean the civilian persons of United States nationality who are in the employ of, serving with, or accompanying the United States forces whenever in the Ryukyu Islands.

(3) "Dependents" shall mean the spouse and any child or relative by affinity, consanguinity or adoption when dependent upon the principal for over half of his or her support whenever in the Ryukyu Islands.

Section 11. (a) The High Commissioner may, if such action is deemed necessary for the fulfillment of his mission under this order, promulgate laws, ordinances or regulations. The High Commissioner, if such action is deemed by him to be important in its effect, direct or indirect, on the security of the Ryukyu Islands, or on relations with foreign countries and international organizations with respect to the Ryukyu Islands, or on the foreign relations of the United States, or on the security, property or inter-

ests of the United States or nationals thereof, may, in respect of Ryukyuan bills, laws, or officials, as the case may be, (1) veto any bill or any part or portion thereof, (2) annul any law or any part or portion thereof within 45 days after its enactment, and (3) remove any public official from office. The High Commissioner has the power of reprieve, commutation and pardon. The High Commissioner may assume in whole or in part, the exercise of full authority in the islands, if such assumption of authority appears mandatory for security reasons. Exercise of authority conferred on the High Commissioner by this subsection shall be promptly reported, together with the reasons therefor, to the Secretary of Defense who shall inform the Secretary of State.

(b) In carrying out the powers conferred upon him by the provisions of subsection (a) of this section, the High Commissioner shall give all proper weight to the rights of the Ryukyuans and shall, in particular, have proper regard for the provisions of the second sentence of Section 2 of this order. (As amended by EO 11010)

Section 12. In carrying out this order, including Section 11, the High Commissioner shall preserve to persons in the Ryukyu Islands the basic liberties enjoyed by people in democratic countries, including freedom of speech, assembly, petition, religion and press, and security from unreasonable searches and seizures, and from deprivation of life, liberty or property without due process of law.

Section 13. The Secretary of Defense may issue such further instructions as may be necessary for the carrying out of this order.

Section 14. Except as they may be inconsistent herewith, the proclamations, ordinances, and directives heretofore issued by the existing Civil Administration and its predecessor Military Government agencies shall continue in force and effect until modified, revoked, or superseded under the authority of this order. No proceeding, either

civil or criminal, pending in any court of the Government of the Ryukyu Islands or of the Civil Administration of the Ryukyu Islands on the date of this order shall abate by reason of this order; and any such proceeding shall be conducted and concluded in accordance with laws, ordinances, proclamations, and directives in effect immediately before the date of this order.

Section 15. This order shall become effective immediately, but until its provisions shall severally become operative as herein provided, the legislative, executive and judicial functions now vested in the Civil Administration and the Government of the Ryukyu Islands, shall continue to be exercised as now provided by law, ordinance, proclamation or directive, and the incumbents of all offices under the Civil Administration or the Government of the Ryukyu Islands shall continue in office until their successors are appointed or elected and have qualified, unless sooner removed by competent authority.

Transitional provisions — Executive Order 11010, March 19, 1962.

Section 3. (a) This order shall not operate to terminate immediately the tenure of the Chief Executive of the Government of the Ryukyu Islands now in Office. That tenure shall terminate when his first successor, appointed under the provisions of Executive Order No. 10713 as amended by this order, enters upon office as Chief Executive or on such other date as may be fixed by the High Commissioner.

(b) The members of the legislative body in office on the date of this order shall continue in office until the termination of their present terms as members.

(c) The amendment of Section 4 of Executive Order No. 10713 made by this order shall become effective on July 1, 1962. All other parts hereof shall become effective on April 1, 1962.

(Translation)

Bill Number 60

Act Number 44

(Passed August 28, 1952)

Be it enacted by the Legislature of the Government of the Ryukyu Islands

A Bill

Concerning Income Tax

Chapter I General Provisions

• • • • •

Section II Final Return

Article 38. a. An individual coming under Paragraph *a* or Item (1) of Paragraph *b* of Article 1 shall, in case his income in the taxable year exceeds Yen 12,000, file within the term from May 1 to 31 of the following year, a return with the Government stating therein matters referred to hereunder and other necessary matters, in accordance with the provision of the enforcement regulations. (This return shall hereinafter be called a "final return"). The same shall apply to cases where the total income for the taxable year of a person who has reported the declared income tax or whose declared income tax has been determined or of a person subject to the provision of Paragraph *a* or *b* of Article 27 is not more than Yen 12,000 or zero (excepting the case where the loss report as provided for in Article 39 is submitted).

1. The total income and taxable total income for the taxable year.

2. The adjusted income and special income for the taxable year in cases where the income tax is computed pursuant to the provision of Article 26, or the secondary adjusted income and special income in cases

where the provision of Paragraph *a* or *b* of Article 27 is applicable.

3. Other than the case coming under the preceding item, the income tax computed pursuant to the provision of Article 25 for the taxable total income as provided for in Item (1) (or the income tax as referred to under Article 29) in cases where the same Article is applicable.

4. In cases where the amount of income tax is computed pursuant to the provision of Article 26, the estimates of the tax amount enumerated in Item (1) or Item (4) of Paragraph *a* of the same Article and the total of those estimates.

5. In cases where the provision of Paragraph *a* or *b* of Article 27 is applicable, the tax amount enumerated in Item (1) to (4) of Paragraph *a* of the same Article and the income tax computed pursuant to the provision of the same paragraph.

6. The basis for the computation of the total income, taxable total income under Item (1), adjusted income under Item (2) or secondary adjusted income, special income and income tax as provided for in Item (3) to the preceding item inclusive.

7. The assets as the sources of income, location of business or place where the income has accrued.

8. The amount of the income tax collected or to be collected from the income for the taxable year pursuant to the provision of Article 51, Article 52 Paragraph *a*, Article 55 or Article 57.

9. The amount of the income tax paid or to be paid from the income for the taxable year pursuant to the provision of Article 43, Article 44, Article 46 or Article 60 (excluding the interest on delinquent tax

amount as referred to in the provision of Article 69 Paragraph *a*.)

10. The excess or deficit in cases where the total amount of income tax as provided for in the preceding two items is at variance with the amount of income tax as provided for in Item (3) to Item (5) inclusive.

11. Net loss to be deductible for the taxable year pursuant to the provision of Article 9 Paragraph *a*, or net loss to be allowed deduction pursuant to the provision of Article 18.

12. Matters concerning exemption or deduction under the provision of Article 18 to Article 24 inclusive or Article 28.

b. In case where a taxpayer receives the payment of earned income from one payer of salary, wage, etc., and where no income is earned besides the earned income in the taxable year, the final return shall not be required to be filed, regardless of the provision of the preceding paragraph.

c. An individual whose income tax was withheld pursuant to Article 52, Paragraph *a* shall attach to the final return the withhold certificate to be given in accordance with Article 77.

d. In case an individual liable to file a final return has died without filing the return, the heir (including testamentary donee by a universal title, hereinafter the same) shall file the return in accordance with the provision of the enforcement regulations.

e. The provision of Article 36 shall apply to the case the final return is filed.

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Chapter VIII Penalties

Article 87. a. A person who has evaded the income tax as referred to under Item (3) to Item (5) inclusive of Article 38 Paragraph *a* or received the refund of the income tax under the provision of Article 49 Paragraph *a* (including the case where this applies *mutatis mutandis* in Paragraph *e* of the same Article) by an act of fraud or other unjust means, shall be punished with penal servitude for not more than three years and/or with a fine of not more than Yen 1,000,000.

b. In the case of Paragraph *a*, the Government shall immediately collect the income tax evaded or refunded (including the amount equivalent to the tax which has become excess among the amount as added pursuant to Article 49 Paragraph *e*).

Article 88. a. A person who has evaded the income tax to be collected pursuant to the provisions of Article 51, Article 52 Paragraph *a*, Article 53 or Article 55 to Article 57 inclusive by an act of fraud or other unjust means shall be punished with penal servitude and/or not more than Yen 150,000.

b. In cases where the income tax evaded under the preceding paragraph is more than Yen 150,000, the fine under the same paragraph may, according to circumstances, be more than Yen 150,000 and not more than the amount equivalent to the income tax evaded.

Article 89. a. A person who has not turned over the income tax to be withheld and turned over pursuant to the provision of Article 51, Article 52, Article 53 Paragraph *a*, or Article 55 to Article 57 inclusive shall be punished with penal servitude not more than three years and/or with a fine not more than Yen 300,000.

b. In cases where the income tax which has not been turned over under the preceding paragraph is more than

Yen 300,000, the fine under the same paragraph may, according to circumstances, be more than the amount equivalent to the income tax which has not been turned over.

UNITED STATES CIVIL ADMINISTRATION OF THE RYUKYU ISLANDS
Office of the Deputy Governor
APO 719

Civil Administration Ordinance No. 114

21 July 1953

RYUKYUAN INCOME TAXES

Amended by:

Ch 1, 26 June 54
CH 2, 10 Nov 54

Pursuant to the powers heretofore reserved to the Deputy Governor, the following "Supplementary Provisions" to Act Number 44, 1952, of the Government of the Ryukyu Islands, entitled "Income Tax Law" are hereby made a part thereof, and shall prevail notwithstanding anything to the contrary within the aforesaid Act.

Income Tax Law

Supplementary Provisions

Section 1. General

a. In the case of taxable years beginning after 30 June 1953, income tax imposed by the Income Tax Law shall be levied, collected and paid as prescribed thereby, except as otherwise herein provided, for each taxable year, upon the net income from sources within or earned within the Ryukyu Islands, of every foreign national, as hereinafter defined, at the rates shown in the table below. Such income when earned in foreign currency credits shall be expressed

in terms of the equivalent Ryukyuan currency, converted at the established exchange rate in effect when earned.

If the net income is:	The tax shall be:
Not over Yen 120,000	10% of the net income
Over Yen 120,000 but not over Yen 240,000	Yen 12,000 plus 12% of the excess over Yen 120,000
Over Yen 240,000 but not over Yen 360,000	Yen 26,400 plus 14% of the excess over Yen 240,000
Over Yen 360,000 but not over Yen 480,000	Yen 43,200 plus 16% of the excess over Yen 360,000
Over Yen 480,000 but not over Yen 600,000	Yen 62,400 plus 18% of the excess over Yen 480,000
Over Yen 600,000 but not over Yen 720,000	Yen 84,000 plus 20% of the excess over Yen 600,000
Over Yen 720,000 but not over Yen 840,000	Yen 108,000 plus 22% of the excess over Yen 720,000
Over Yen 840,000 but not over Yen 960,000	Yen 134,400 plus 24% of the excess over Yen 840,000
Over Yen 960,000 but not over Yen 1,080,000	Yen 163,200 plus 26% of the excess over Yen 960,000
Over Yen 1,080,000 but not over Yen 1,200,000	Yen 194,400 plus 28% of the excess over Yen 1,080,000
Over Yen 1,200,000 but not over Yen 1,800,000	Yen 228,000 plus 31% of the excess over Yen 1,200,000
Over Yen 1,800,000 but not over Yen 2,400,000	Yen 414,000 plus 34% of the excess over Yen 1,800,000
Over Yen 2,400,000 but not over Yen 3,000,000	Yen 618,000 plus 37% of the excess over Yen 2,400,000
Over Yen 3,000,000 but not over Yen 4,200,000	Yen 840,000 plus 42% of the excess over Yen 3,000,000
Over Yen 4,200,000 but not over Yen 6,000,000	Yen 1,344,000 plus 48% of the excess over Yen 4,200,000
Over Yen 6,000,000 but not over Yen 9,000,000	Yen 2,208,000 plus 56% of the excess over Yen 6,000,000
Over Yen 9,000,000	Yen 3,888,000 plus 65% of the excess over Yen 9,000,000

b. In lieu of the tax imposed by the preceding paragraph, for the taxable years beginning after 30 June 1954, in the case of an individual who is a married principal, having a net income equal to or in excess of Yen 648,000, when such individual so elects, the tax imposed by this section shall be determined by multiplying by two (2) the tax which would be imposed where the net income divided by two (2). However, no married principal having a net income of less than Yen 648,000 shall be required to pay a tax in excess of an amount equal to that otherwise re-

quired to be paid had the net income been Yen 648,000 and had such election been made, and in the event the spouse of an individual mentioned in the preceding paragraph has income which is taxable hereunder, the above provision shall apply only when the income of the spouse is combined with the income of such individual in a joint return. (Added by Ch 2/54)

Section 2. Definitions

a. The term "foreign national" shall include every natural person whose permanent legal residence is not within the Ryukyu Islands and whose presence therein is pursuant to original entry under authority of military, naval or governmental orders, or by permit of the Deputy Governor. (As amended by Ch 1/54)

b. The term "net income" means the gross income, as hereinafter defined, less deductions allowed by the Income Tax Law (excluding Article 8, paragraph a, 5, thereof), except as provided in Section 3, hereof. (As amended by Ch 2/54)

c. The term "gross income" means income including gains, profits and income derived from salaries, wages or compensation for personal services in the Ryukyu Islands, or whatever kind and in whatever form paid, and wherever paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also, from interest, rent, dividends, securities or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any Ryukyuan source whatever. (As amended by Ch 1/54)

Section 5. Estimated Tax

a. All taxpayers under these provisions having taxable income not subject to withholding shall, on or before 15 September each taxable year, prepare and file an estimate

of such income to be received during the taxable year and shall compute the tax to become due thereon. The declaration of estimated income herein provided for shall be made on forms prescribed by the Chief Executive, Government of the Ryukyu Islands. The declaration of estimated income shall be filed with, and one fourth of the estimated tax shall be paid to, the Government of the Ryukyu Islands. On or before the 15th of December and the 15th of March of each taxable year the taxpayer thus preparing a declaration of estimated income shall pay an additional one fourth of the estimated tax in the manner prescribed. Payment of the estimated tax for the final quarter of the taxable year shall be made not later than the 15th of July of the year following the taxable year.

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Section 6. Returns

a. Taxpayers whose sole taxable income is derived from wages and salaries subject to withholding under these provisions shall file final returns with and on forms prescribed by the Chief Executive, Government of the Ryukyu Islands, not later than the 15th of August in the year immediately following the taxable year, with payment for any taxes due, or claim for refund in the case of any overpayment.

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Section 7. Rules and Regulations

The Chief Executive, Government of the Ryukyu Islands, is hereby authorized and empowered to make such rules and regulations, not inconsistent with the Income Tax Law as supplemented by these provisions, as shall be necessary for the administration of the tax imposed hereby.

Section 8. Rescission.

Paragraph 1.b of Civil Administration Ordinance Number 86, "Income Tax Law," dated 7 October 1952 is rescinded.

Section 9. Effective Date

The effective date of these provisions shall be 1 July 1953.

BY DIRECTION OF THE DEPUTY GOVERNOR:
1 Incl

Withholding Chart

s/t/ CHARLES V. BROMLEY
Brigadier General, U.S. Army
Civil Administration

CA Ordinance No. 144

16 March 1955

PART 1. COURTS OF THE CIVIL ADMINISTRATION

CHAPTER 1. BASIC LAW

1.1.1—All and any powers of administration, legislation and jurisdiction over the territory and inhabitants of the Ryukyu Islands, including their territorial waters, are vested in the Government of the United States of America and will be exercised through the High Commissioner of the Ryukyu Islands and the United States Civil Administration of the Ryukyu Islands. (As amended by Ch 7)

1.1.2—The prevailing law shall be the law of the Ryukyu Islands as it existed on 1 April 1945, as the same has been amended, modified or otherwise altered by the laws of the Civil Administration, the Government of The Ryukyu Islands and their predecessors.

CHAPTER 2. COMPOSITION AND JURISDICTION OF THE CIVIL ADMINISTRATION COURTS

1.2.1—The courts of the Civil Administration having jurisdiction over criminal offenses are the Superior Court, the Sessions Court, and the Appellate Court. (As amended by Ch 19/63)

1.2.2—*Superior Court.* The Superior Court shall have jurisdiction to try all offenses within the criminal jurisdiction of Civil Administration Courts, and shall have the power to impose any lawful punishment. Offenses punishable by death or imprisonment for life shall be tried before three judges, if the defendant waives a jury trial. All other offenses shall be tried before one judge. Judges of the Superior Court shall be appointed to office by authority of the High Commissioner of the Ryukyu Islands. Each judge so appointed shall be a citizen of the United States and in the employ of the United States Government. (As amended by Ch 19)

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1.2.5—*Jurisdiction over Offenses.* In conformity with the provisions of Executive Order No. 10713, dated 5 June 1957, jurisdiction of the USCAR criminal court shall extend to:

a. Offenses under any proclamation, ordinance, or directive promulgated by, or under the authority of, the Civil Administration and offenses under any provision of the penal law of the Ryukyu Islands as defined in Section 1.1.2 above.

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Chapter 5. Indictment and Jury Trial

(Added by Ch 19/63)

1.5.1—*Right to Indictment and Trial by Jury.* Any person charged with an offense before a Civil Administration Court shall have the right to indictment by a grand jury as to any offense which may be punished by death or imprisonment for a term exceeding one year and trial by petit jury as to any offense other than a petty offense in accordance with the provisions of this chapter.

1.5.2—*Use of Indictment, Information, or Complaint in a Civil Administration Court.* An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term

exceeding one year shall be prosecuted by indictment unless indictment is waived or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment, information, or complaint as authorized by rules of procedure.

1.5.3—*Jury Trial.* Cases, other than petty offenses, shall be tried by petit jury unless the defendant waives a jury trial.

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2.2.29—An attempt to do any act which constitutes an offense under any law of the Civil Administration shall constitute an offense which shall be punishable to the same extent as though the act had been committed.

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Motion to Perpetuate Testimony

Comes now the plaintiff through her attorneys and moves this Court to allow the plaintiff to take the deposition and/or interrogatories of the following persons:

1. Andres U. Calibuso, Filipino
2. Martin Ellima, Filipino
3. Woo Dong Hahn, Korean
4. Alfred G. Hamann, American
5. Yoshio Higa, Ryukyuan
6. Ken S. Tomita, American Nisei
7. K. Y. Yan, Chinese
8. Rogaciano Yecla, Filipino
9. James W. Kelly, American
10. Jack C. Lentz, American
11. Horace Perker, American
12. Benjamin A. Terrill, American

The above twelve persons were the jury which convicted the plaintiff in the case of United States v. Rose in the Superior Court of the United States Civil Administration of the Ryukyu Islands, Case Sup. C-11-63. The substance

of their testimony is that half of most of the jury is not composed of American Citizens but is made up of Filipino, Korean, Chinese, Ryukyuan and non-resident Americans.

Likewise, the plaintiff intends to show that the jury did not find the plaintiff the operator of the Tea House August Moon.

13. The plaintiff wants to take the deposition of Cyril E. Morrison, the judge who conducted the trial on Okinawa. The substance of his testimony is that he and his court are not members of the Federal Judiciary System; that he was not appointed by the President of the United States or confirmed by the U.S. Senate, as required by the Federal Constitution, but this judge was appointed by the Commanding General of Ryukyu Islands, and that this said judge was a civilian employee of the Department of the Army.

14. The plaintiff wants to take the depositions of Abraham Black, Charles E. Knolton, Jr., and John P. King, the judges on the U.S. Civil Administration, Appellate Court, in Case No. AC-2-63 in Rose v. United States of America. This is to prove that neither the judges nor the Court are members of the Federal Judiciary System and that the judges of this Court were not appointed by the President of the United States or confirmed by the U.S. Senate as required by the Federal Constitution, but such judges were appointed by the Commanding General of Ryukyu Islands and these three judges were civilian employees of the Department of the Army.

All the above persons' addresses are Naha, Okinawa, Ryukyu Islands.

15. Mrs. Toyoko Uehara, 3-59, Tsuji-cho, Naha City.

16. Mrs. Tomi Uehara, same as above.

17. Mr. Seiro Kinjo, same as above.

The last three persons will prove that the plaintiff was not the operator of the Tea House August Moon as alleged in the indictment, but that the plaintiff had leased this tea

house to one Toyoko Uehara who operated said business and paid the income taxes that the plaintiff is charged with not paying. That now the government has offered to return the taxes that said Toyoko Uehara has paid, since Eiko Rose, the plaintiff, has been convicted of income tax evasion.

STUART H. ROBESON
ROGER E. BROOKS
Attorneys for Plaintiff

POINTS AND AUTHORITIES

Rule 27(b) and (c) of the Federal Rules of Civil Procedure is for taking of depositions of witnesses to perpetuate their testimony for use in further proceeding. If this testimony is not taken now, these witnesses may be removed from Okinawa and it will be impossible to locate the witnesses at the time of a trial.

STUART H. ROBESON
ROGER E. BROOKS
Attorneys for Plaintiff

[Filed July 11, 1966]

Order

Upon consideration of the motion of plaintiff to perpetuate testimony filed herein June 7, 1966, it is this 11th day of July, 1966,

ORDERED that the said motion be, and the same hereby is denied.

ROBERT M. STEARNS,
Clerk

By /s/ VIRGINIA DYER
Deputy Clerk

EDWARD M. CURRAN
Presiding Judge

[Filed June 28, 1963]

Exhibit 1

IN THE SUPERIOR COURT OF THE UNITED STATES
CIVIL ADMINISTRATION OF THE RYUKYU ISLANDS

Criminal No. 3

Grand Jury No. 2

THE UNITED STATES OF AMERICA

v.

EIKO UEHARA ROSE

The Grand Jury charges:

Count 1. Violation of Section 2.2.29 of CA Ordinance No. 144.

In that EIKO UEHARA ROSE, being then the owner and recipient of taxable income derived from the operation of the Tea House August Moon, also known as the Tea House Matsunoshita, did, at Okinawa, Ryukyu Islands, on or about 5 September 1962 attempt to evade payment of income taxes in the total amount of about $70,000 lawfully due the Government of the Ryukyu Islands on taxable income derived by her from operations of the Tea House August Moon during the period from about 1 July 1957 to about 30 June 1962, in violation of Article 87 of Government of the Ryukyu Islands Act No. 44, dated 12 October 1952, "Income Tax Law," as amended and supplemented by Civil Administration Ordinance No. 114, dated 21 July 1953, "Ryukyuan Income Taxes," by wilfully, wrongfully, and unlawfully filing with the Government of the Ryukyu Islands false and fraudulent income tax returns for the period 1 July 1957 to 30 June 1962, from which substantial amounts of taxable income actually derived by her from operations of the Tea House August Moon, during the period covered by the said returns, were deliberately omitted by the said EIKO UEHARA ROSE.

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